

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3161 of 2000
and
CIVIL APPLICATION NO. 10894 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD.

Versus

KESIBAI VIRA,WD/O LATE VIRA LADHA

Appearance:

MR PV NANAVATI for appellant

MR MEHUL S. SHAH for Respondents - Claimants Nos.1
to 6 as Caveator

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE D.A.MEHTA

Date of Order: 29/11/2000

Heard learned Counsel.

Admit. Issue Notice. Mr.Mehul Shah accepts the notice on behalf of the respondents nos.1 to 6 and service of notice is waived. It is submitted on behalf of both the sides present before the Court that the other respondents nos. 7 to 10 need not be served as they are only formal parties for the purpose of this appeal.

2. The main appeal is taken up for hearing right today. This appeal under Sec.173 of the Motor Vehicles Act is directed against the order dated 20th July 2000 passed by the Motor Accident Claims Tribunal (Main), Kachchh, at Bhuj below Exh.6 in M.A.C.P. No. 713/97 under Sec.163-A of the Motor Vehicles Act. The Tribunal has held the opponents nos.4 and 5 to be jointly and severally liable and they have been directed to deposit with the Tribunal a sum of Rs.3,29,500/- with running interest at the rate of 12% per annum from the date of the main claim Petition till the date of deposit. The said amount was required to be deposited within one month from 20th July 2000. Learned Counsel for the appellant submits that the amount may be permitted to be deposited even now although the period of one month has expired. Mr.Mehul Shah appearing for the respondents nos.1 to 6 has no objection if the time is granted for that purpose. Accordingly time is extended upto today for a further period of three weeks from today. It has also been submitted by Mr.Nanavati that the sum of Rs.25,000/- has already been deposited at the time of filing the appeal and such amount of Rs.25,000/- may be transmitted to the concerned Tribunal and the rest of the amount shall be deposited by the appellant with the Tribunal on or before 20th December 2000.

3. The impugned order in this appeal is an award under Sec.163-A of the Motor Vehicles Act in the nature of an interim award and the main Claim Petition under Sec.166 is still pending and the same is yet to be decided on merits. The present impugned order is obviously subject to adjustment against the final award that may be passed in the main Claim Petition. It is also submitted that the appeals of this nature have already decided by this Court including the First Appeal No.2271 of 2000 decided on 8th Nov.2000 and identical orders are sought by both the sides in this appeal as well. We accordingly decide this appeal with the directions as under:

(i) The respondents-original claimants shall file an undertaking before the Tribunal within four weeks stating that it would pursue the main Claim Petition and obtain a judgment and award on merits and that it shall not permit the Claim Petition to be dismissed for default nor it would withdraw the same.

(ii) On such deposit (including Rs.25,000/transmitted to the Tribunal) as stated in para 2 hereinabove being made, the claimants shall be entitled to withdraw 35% of the deposited amount as per the apportionment order passed by the Tribunal subject to the conditions mentioned in the award itself and the balance of 65% shall be invested by the Tribunal in Fixed Deposit with any Scheduled Bank initially for a period of three years and on maturity, it shall be renewed at the end of every year at a time without any further orders in this regard by this Court till the main Claim Petition under Sec.166 is decided. The original claimants, i.e. respondents nos.1 to 6 herein shall also be entitled to withdraw the periodical interest on such Fixed Deposit.

(iii) It shall also be open for both the sides to raise all factual as well as legal submissions before the Tribunal as and when the main Claim Petition is heard by the concerned Tribunal.

Subject to the aforesaid observations and directions, this appeal is hereby dismissed. No order as to costs.

4. Since the main appeal itself has been decided and dismissed, there is no question of any stay in this Civil Application for stay. The Civil Application is accordingly rejected.

29th Nov.2000 (M.R. Calla, J.)

(D.A. Mehta, J.)

Sreeram.